

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A. A.,

Claimant,

and

ORANGE COUNTY REGIONAL CENTER

Respondent.

OAH No. 2005060533

DECISION

Elizabeth Feyzbakhsh, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 16, 2005, and on January 5, 6, 10, 13, 17, 25, and 30, and February 6, 2006, in Santa Ana, California.

Bonnie Yates and Melanie Segal, Attorneys, Law Offices of Bonnie Z. Yates, represented Claimant A. A. Cynthia Staffelbach, Attorney, Woodruff, Spradlin & Smart, represented respondent Regional Center of Orange County (RCOC).

Witnesses were placed under oath or affirmation and gave testimony. Documentary evidence was offered and received. The parties requested and were granted the opportunity to submit written closing arguments. The record was left open for the parties to submit written closing arguments and on March 7, 2006, the matter was submitted.

ISSUES

1. Should RCOC be required to fund 30 hours of in-home behavioral services per week for Claimant?
2. Should RCOC be required to reimburse Claimant for privately funded behavioral services?

FACTUAL FINDINGS

1. Claimant was born on May 1, 2000. He became a Regional Center of Orange County (RCOC) consumer prior to the age of three based on a diagnosis of autism.

2. Autism is a serious psychological disorder with onset in early childhood. Autistic children usually show minimal emotional attachment, absent or abnormal speech, many have retarded IQ's, many engage in ritualistic or repetitive behaviors, many show aggression and some engage in self-injurious activity.

3. There is a general agreement within the scientific community that Applied Behavioral Analysis is the best treatment for individuals on the autism spectrum. Applied Behavioral Analysis is a blanket term for a systematic behavioral training program designed to reduce maladaptive behaviors and teach pre-academic and academic, self-help, executive function, problem solving and interpersonal skills. The consensus across programs is generally strong concerning the need for early and intensive intervention, with a behavioral emphasis, family participation, one to one instruction, and integration. Intensive intervention means a minimum of 25 hours a week for at least a year.

4. RCOC uses a "consultative model" for delivery of behavioral services. The consultative model was described as services that are rooted in ABA but the model is "parent training". Parent training consists of a trained therapist working with the child and the parents to address certain behaviors and/or deficits that the consumer may have. This model focuses on training the parents to be the therapist and does not focus on the therapist working one to one with the consumer. Most ABA programs include a parent training component.

5. One to one behavioral intervention is a method of delivery of behavioral services. It consists of a trained therapist working directly with the child. This is usually in an in-home setting and can also include a "shadow aide", a trained therapist who accompanies the child to school and prompts the child to act appropriately during the school day.

6. Prior to his third birthday, Claimant received intensive treatment from A Comprehensive Educational Services, Inc., (ACES) as part of RCOC's Early Start Program. Immediately prior to turning three years old, Claimant was receiving 72 hours per month of intensive one to one behavioral intervention in his home.

7. On April 11, 2003, Claimant's mother, aware that Claimant was soon to turn three and would transition from the Early Start Program at RCOC to the over three services mandated by the Lanterman Act, telephoned RCOC and requested "in home behavioral services" for her son.

8. The eligibility guidelines for the Early Start program are different than the eligibility guidelines under the Lanterman Act. Eligibility for the Early Start program is

more inclusive than eligibility under the Lanterman Act such that a consumer may qualify for Early Start services but not qualify for services under the Lanterman Act. Services for both the Early Start program and the Lanterman Act are administered by the regional centers throughout the state.

9. On May 7, 2003, RCOC requested a global assessment from ACES. ACES completed the assessment and recommended intensive intervention within the classroom setting based on his age and his number of emerging skills, with thirty-five to forty hours per week of total programming time. ACES indicated that a combination of methodologies should be used, including one to one teaching, visual/organizational strategies (TEACCH), pivotal response training, Picture Exchange Communication Systems, Floor Time, and play skills. All methodologies should focus on language/communication skills, social skills, independence skills, fine motor skills, and academic/cognitive skills.

10. On many occasions from April 2003 through June 2005, Claimant's mother contacted RCOC to discuss the status of her request for services and to express her frustration that in home behavioral services had not been authorized.

11. In June 2003, Claimant started pre-school in the Capistrano Unified School District (CUSD). He was placed in a Special Day Class. Claimant was receiving Intensive Behavior Intervention (IBI) services from the school. On May 4, 2004, Claimant's parents requested 30-35 hours of IBI programming time. CUSD did not agree to provide the requested hours of IBI. He remained in the special day class until April, 2005 when his parents enrolled him in a private pre-school with a shadow aide from the Center for Autism and Related Disorders (CARD). Claimant has filed a request for a due process hearing against the school district claiming that CUSD failed to offer a free appropriate public education (FAPE). At the time of this hearing, no due process hearing date for that matter had been set.

12. On July 16, 2003, an eligibility meeting was held between Claimant's parents and RCOC. Initially RCOC indicated that Claimant was found not to be eligible for over three services under the Lanterman Act because the team did not feel that Claimant had a "substantial handicapping condition". Claimant's mother indicated that her son had made great progress but still had many behaviors that interfered with his learning and participation in the community. Dr. Zinar conducted Claimant's eligibility review and determined that Claimant was eligible for RCOC services under the Lanterman Act for a period of one year so that new records, evaluations, and metabolic testing results could be obtained.

13. On August 11, 2003, Claimant's mother signed a Behavioral Change Information Sheet which is intended to inform RCOC of behavioral problems experienced by the parents. On August 20, 2003, Claimant's mother contacted the Early Start Coordinator at RCOC, and requested in home services for her son.

14. On September 15, 2003, Claimant's mother contacted RCOC regarding obtaining in home services for her son. She was told that her request had been sent to the

Behavioral Services Resource Group (BSRG) and that no vendors were currently accepting referrals for behavioral services.

15. On September 30, 2003, Claimant's mother contacted the Early Start Coordinator and informed her that she was still waiting for in home services. On October 2, 2003, RCOC's Associate Executive Director contacted Claimant's mother and told her that she [Claimant's mother] was on the top of the waiting list.

16. On December 3, 2003, Claimant's mother submitted a signed behavior intervention form. This form is intended to inform RCOC of behavior difficulties that a parent may be encountering so that services may be obtained to address the parent's concerns. Claimant's mother noted at the bottom of the page that she wanted the self-help skills addressed one-on one with her son. On December 8, 2003, Patrick Ruppe received the behavior intervention form and directed the service coordinator to sign up for the BSRG and to request parent training.

17. On January 2, 2004, the BSRG approved a 10 hour behavioral assessment from Coyne & Associates. Also on that date RCOC sent a referral to Coyne & Associates indicating that Claimant's mother was eager to learn parent training techniques.

18. On February 11, 2004, a behavioral assessment was completed recommending 20 hours of parent training, and 12 hours of toilet training. On February 20, 2004, the BSRG authorized funding of 12 hours of toilet training and 20 hours of parent training. On February 23, 2004, RCOC informed Claimant's mother that parent training has been authorized and Claimant's mother repeatedly asked if her son qualified for one to one. The service coordinator suggested that the parties have a meeting to discuss Claimant's Individual Program Plan (IPP).

19. A planning team meeting was held on March 5, 2004. There is no indication that Claimant's mother's request for one to one behavioral services was considered.

20. On April 4, 2004, Coyne began services. A total of 32 hours were provided. The services were provided in one hour sessions over a period of seven months. No one to one intensive behavioral intervention was provided.

21. On May 24, 2004, Claimant's mother left a telephone message for the service coordinator stating that she was requesting more services than were being provided by Coyne. On June 21, 2004, a second IPP meeting was held. Claimant's mother requested self care skills training for her son but nothing was reflected in the IPP document.

22. On June 25, 2004, the service coordinator notified the BSRG that Claimant's mother requested referrals to vendors who can assist with self-care. The BSRG recommended a book for her but authorized no one to one services. On July, 23, 2004, Claimant's mother called the service coordinator and asked for behavioral services to address her son's lack of self-help skills. On August 6, 2004, BSRG noted that the Coyne contract

was already in place and did not authorize any additional services. They extended the duration of the contract with Coyne but provided no additional hours.

23. On September 1, 2004, Claimant's mother sent a request for 40 hours per week of one to one behavioral services. On September 2, 2004, Dr. Himber and Dr. Pontius conducted a trans-disciplinary evaluation. He scored in the mildly autistic range. He was found to be substantially disabled in the area of Learning and Self-direction and therefore found to be eligible for RCOC services. His eligibility was to be reviewed in one year.

24. On September 9, 2004, the BSRG considered Claimant's mother's request. The BSRG decided to schedule observations of Claimant to determine whether or not the requested services would be provided. On November 9, 2004, Dr. Cone observed Claimant at home. On December 8, 2004, Dr. Cone observed Claimant at school. On January 26, 2005, Dr. Cone issued his report. Dr. Cone recommended parent training booster sessions and he recommended that an experienced behavior analyst explain functional analysis concepts to the parents.

25. On February 4, 2005, the BSRG recommended a referral for a functional assessment (FAA) through a vendor called California Institute for Behavior Analysis (CIBA). On April 8, 2005, Claimant's mother sent a letter to RCOC requesting 30 hours of one to one behavior intervention effective immediately.

26. On February 14, 2005, Mrs. A. was informed by RCOC that CIBA would not be able to begin the FAA until after April 1, 2005. On April 5, 2005, representatives from CIBA first visited Claimant's home. They visited again on April 15, 2005. Claimant's mother believed that CIBA was only authorized to provide parent training and Claimant's mother refused to let them continue with their FAA and indicated that she preferred to use another company, Autism Interventions and Resources (AIR). On April 29, 2005, Dr. Lazo sent a letter to Claimant's mother in which she explained that AIR could not do the FAA because they were a new vendor and had exceeded their permissible number of referrals.

27. In late April 2005, Claimant's parents began privately funding ABA services for their son. Behavioral intervention services through the Center for Autism and Related Disorders, Inc. (CARD) commenced on April 26, 2005. His program has consisted of approximately 30 hours per week since that time. His treatment includes approximately 21 hours per week of discrete trial behavioral intervention services in the home setting and a full time CARD shadow aide at school each day. The program targets an increase in communication, pragmatic understanding, social cognition, abstract verbal reasoning, play, and socialization skills. In addition, behavioral excesses such as aggression, negotiating, and non-compliant behaviors are extinguished through redirection, differential reinforcement of other compatible behaviors, differential reinforcement of alternative behaviors, extinction, and other systematic therapeutic methods.

28. On May 13, 2005, Claimant's mother requested a choice of three vendors to perform the FAA. On May 27, 2005, a planning team meeting was held to discuss the

request for direct services to be provided by CARD. Two weeks prior to the meeting RCOC received the CARD initial evaluation conducted in April 2004. On May 27, 2005, Amy Williams sent a Notice of Action letter denying Claimant's mother's request for in home services because the FAA was not completed and indicating that the request for additional vendor names would be resubmitted to the BSRG and may cause a delay.

29. On August 8 and 18, 2005, the BSRG reviewed Claimant's request and referred the FAA to Coyne & Associates (Coyne).

30. On September 22, 2005, a list of two additional vendors was provided to Claimant, AST and IABA. On September 27, 2005, Claimant's mother notified RCOC that she would like IABA to conduct the FAA. On October 6, 2005, RCOC was informed that IABA would be unable to conduct the FAA because the case was in litigation. On October 11, 2005, Claimant's mother was notified that IABA could not conduct the FAA "due to prior commitments". RCOC suggested AST or Coyne. To date, no FAA has been conducted.

Dr. Bostani's Testimony

31. Dr. Betty Bostani testified as an expert for Claimant. She is a licensed clinical psychologist who studied with Dr. Ivar Lovaas at the Lovaas Institute. She observed Claimant on June 9, 2005 in her office for approximately six hours. In her opinion, Claimant has delays in the areas of physical, self-help, social, and communication skills. He also has deficits in the areas of pragmatic language, perspective taking, executive functioning and attention.

32. At the time of the observation, Claimant's social delays included avoidance of eye contact, non-responsiveness to others, inability to initiate interactions with others, impaired perspective taking skills, rigidities, use of jargon, repetitive video talk, and struggles with communication. Dr. Bostani opined that these deficits impede his ability to establish mutually satisfying relationships with his peers and if the deficits are not addressed, they will interfere with his ability to learn as well.

33. Claimant's deficits in executive function impact his ability to modulate his actions, responses, emotions, and behavior. He requires structure, with clear and consistent expectations and consequences. Dr. Bostani further opines that given intensive intervention, Claimant has considerable potential to make progress in all areas and function independently in the community.

34. Dr. Bostani recommended a continuation of his in home behavioral program consisting of thirty to thirty-five hours per week of one-to-one behavioral therapy. Fifteen of the hours should be in the school setting with a shadow aide. Parent training was also recommended to provide the parents with a tool to continue to teach and interact with Claimant and to provide consistency. Claimant's current CARD program is consistent with Dr. Bostani's recommendations.

Junelyn Lazo

35. Dr. Lazo is a Ph.D. in Child Developmental Psychology. She is a consultant at the Center for Behavioral Sciences. They conduct behavioral analysis services. She used to be employed by RCOC. She has worked for ten years with children with autism. She attended the planning team meeting on March 9, 2005. She observed Claimant and spent time playing with him. He was very active during the meeting.

Dr. Cone

36. Dr. John D. Cone testified as an expert for respondent. Dr. Cone is a licensed clinical psychologist and a board certified behavioral analyst. Dr. Cone provides services for RCOC and other agencies on a consultative basis. Dr. Cone conducts assessments and evaluates consumers' need for behavioral services.

37. Dr. Cone conducted home and school observations of Claimant. Dr. Cone observed Claimant at home on November 9, 2004. He observed for approximately 85 minutes. Dr. Cone indicated that Claimant appeared to be functioning predominantly within normal limits in most areas, developmentally. However, he indicated that a more precise determination of this would have to await formal developmental evaluation using multiple measures, in multiple settings, and from multiple perspectives. The non-compliance observed by Dr. Cone in his home visit was within the limits of normal, 4 year old behavior.

38. Dr. Cone observed Claimant at school on December 8, 2004. According to Dr. Cone, Claimant played along side other children, responded to initiations with others appropriately, participated in class, complied with teacher requests and transitioned well. Dr. Cone observed that Claimant's receptive and expressive language appeared appropriate but of "low production". During Dr. Cone's school visit, Claimant behaved appropriately in class. He did not manifest behavior specific to autism and was indistinguishable from other children cognitively, socially, motorically, and in self-care skills. Dr. Cone conducted no formal assessments of Claimant. Based on his school observation, Claimant fails to meet the DSM-IV criteria for autistic disorder.

Jason Garner

39. Jason Garner is a supervisor with CARD. He has worked for CARD for ten years. He testified that when Claimant started the CARD program he had excessive maladaptive behaviors. He would manipulate situations, he would not play with others, he had limited interests in activities, he had trouble with language, he was aggressive toward his brother and others, he had reduced eye contact.

40. Claimant has made great progress but more progress needs to be made. He is still sometimes echolalic. He has an increased awareness of safety issues now but remains impulsive. Claimant's language has improved but is still not age appropriate. He has

difficulty in tracking and planning and his attention span remains short when he is not interested in something. Claimant is currently receiving a 30 hour program. He is receiving 20 hours at school and 10 at home. His program also includes 8 hours of supervision per month and sixteen hours of clinic meetings per month. Garner anticipates that Claimant will be functioning independently with no assistance in approximately twelve months. Academically, Claimant is functioning at age level. If Claimant's program is discontinued, he will, at best, remain the same but he will likely regress.

41. Claimant has incurred expenses of \$57,901.75 from April 2005 through December 31, 2005 to provide necessary behavioral services for their son. In addition, Claimant has incurred CARD expenses from January 2006 through the present.

LEGAL CONCLUSIONS

1. The Early Intervention Services Act was designed to provide "appropriate early intervention services individually designed" for infants and toddlers who have disabilities, or are at risk for them "to enhance their development and minimize the potential for developmental delays." (Gov. Code § 95001, subdivision (a) (1).) The legislature found that early intervention services maximize the ability of families to better provide for the special needs of their children. (Gov. Code § 95001 (a) (2).)

2. Under the Lanterman Act, the State of California has accepted responsibility to assist the developmentally disabled by providing coordinated services and supports designed to meet the needs and choices of such disabled persons. The services and supports are to support as far as possible the integration of the developmentally disabled into the mainstream life of the community, and to assist them in approximating the pattern of everyday living available to those who are not disabled. (Welfare and Institutions Code § 4501.) At the same time, maintenance of the disabled child in the family home is made a priority.

3. Welfare and Institutions Code section 4512, subdivision (b) states in pertinent part:

"Services and supports for persons with developmental disabilities' means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary ...shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of ... the consumer's family, and shall include consideration of...the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not

limited to, diagnosis, training, education...behavioral training and behavior modification programs....”

4. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual consumer and within the bounds of the law each consumer’s particular needs must be met. (Welfare and Institutions Code § 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a) (2).)

5. Services provided must be cost effective and the Lanterman Act requires the regional centers to control costs so far as possible. Welfare and Institutions Code § 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

6. Welfare and Institutions Code section 4648, subdivision (a)(8) provides that: “Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

7. The purpose of the Individuals with Disabilities Education Act (IDEA) is to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living. (20 U.S.C. § 1400(d).)

8. The term “special education” in federal law means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29). California Education Code section 56031 augments this definition to include “specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction.”

9. The obligation to provide a FAPE does not require a state to “maximize” each child’s potential. (*Board of Education of Hendrick Hudson Center School District, Westchester County v. Rowley* (1982) 458 U.S. 176, 200 (Rowley).) A school district must provide a basic floor of opportunity consisting of access to specialized instruction and related services which are individually designed to provide educational benefit to the child with a disability. School Districts are required to provide access to an education which is sufficient to confer some educational benefit upon the child. (*Ibid*).

10. RCOC argued that Claimant should be estopped from bringing this action for failure to exhaust administrative remedies because this administrative hearing is akin to a judicial review of the program offered by CUSD, and that RCOC is not responsible for funding such a program because it should be provided by the school district. This argument fails for two reasons. First, there is no authority for the position that a Claimant must complete a due process hearing against the school district before filing a request for a due

process hearing against a service agency. Second, this administrative hearing is not akin to a judicial review of the program offered by CUSD. The responsibilities placed on each agency are different. The service agency is required to provide more than the school district such that even if the school district was complying with its obligation to a particular student, the service agency may still be required to provide other services based on its obligation to maximize the potential of each consumer to live a “normal” life.

11. RCOC further argued that generic services should be used where available and that Service Agency funds should not be “used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”(Welf. & Inst. Code § 4648, subd. (8).) RCOC’s rationale is that Claimant’s school district was responsible for those services needed to provide Claimant with a FAPE and so RCOC should not be required to provide the services.

The evidence established that Claimant’s behavioral challenges were not limited to those associated with his educational needs. Rather, they were also impacting his relationships at home and in the community. Those non-educational needs were always RCOC’s responsibility, not the responsibility of the school district.

12. The Lanterman Act envisions a higher level of services for a consumer and requires regional centers, as the agents of the state, to provide developmentally disabled people, including those of school age, with those services and supports that will allow them, “. . . regardless of age or degree of disability, and at each stage of life . . .” to integrate “. . . into the mainstream life of the community . . .” and to “. . . approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code § 4501.) Conversely, the school district is only required to provide a basic floor of opportunity for students to be able to access the curriculum.

13. Educational services or supports are never per se solely a school district’s responsibility. In fact, the Lanterman Act includes “education” as one of the services to be provided by a service agency to qualified persons. (Welf. & Inst. Code § 4512, subdivision (b).) Consequently, a regional center may not summarily deny or delay a consumer’s request for a service solely on the ground that the requested service is educational in nature and should be provided by the school district.

14. To the extent that RCOC’s obligations under the Lanterman Act overlap with the obligations of the school district, where a generic agency is required to provide services but fails or refuses to do so, such services must be provided by the regional center, or it must make up any service shortfall, as the payor of last resort. If the regional center believes that the generic source has failed to meet its obligations, then it must provide the services and it is authorized to pursue reimbursement under Welfare and Institutions Code section 4659.

Claimant’s Need for Direct Behavioral Services

15. Claimant is mildly autistic. He is very high functioning but continues to have difficulty with language, impulsivity, tracking, and paying attention for an extended period of time. Claimant's condition has improved dramatically due to the intensive intervention he has been receiving. While all the experts agree that parent participation is key to the success of any ABA program, it is unreasonable to expect the parents to be the sole providers of this type of behavior intervention. It was not proven that the "consultative model" or "parent training" would have achieved results similar to those achieved by direct ABA services. This conclusion is based upon factual findings one through forty-one and legal conclusions one through fourteen.

16. Claimant has proved that, in order to meet his unique needs, Claimant should receive thirty hours per week of direct, one to one ABA therapy. Such therapy should include both in home therapy and a shadow aide or other support provided by the service provider during school hours in his educational placement. These services are to be provided by CARD or, if CARD is unavailable to continue services, by another qualified ABA provider. In addition, these services should include eight hours per month of supervision and sixteen hours per month of clinic time. This conclusion is based upon factual findings one through forty-one and legal conclusions one through fourteen.

Reimbursement for CARD Services

17. The weight of the evidence established that Claimant has had a need for intensive one to one behavioral services since prior to his third birthday. RCOC should have been providing this service beginning at age three. Claimant's requests should have been addressed. The delay was not justifiable. This conclusion is based upon factual findings one through forty-one and legal conclusions one through fourteen.

18. RCOC violated the Lanterman Act when it failed to provide such services and refused to consider Claimant's requests as requests for one to one direct behavioral services. The contention by RCOC that Claimant's mother's requests were unclear is not persuasive. When Claimant began requesting services, prior to her son's third birthday, she was clearly requesting a continuation of the services she was receiving in the Early Start program. That 72 hour per month program was intensive and included one to one services. To conclude that Claimant's mother's request was for parent training only is not reasonable. Concluding that the requests that followed were similarly unclear is similarly unreasonable. This conclusion is based upon factual findings one through forty-one and legal conclusions one through fourteen.

19. Even if it were determined that the requests were clear, the testimony and documentary evidence make clear that the result would have been the same. The testimony was consistent throughout the RCOC personnel that RCOC provides services pursuant to the "consultative" or "parent training" model. Therefore, it would not matter if the request was clear or unclear, it would have been denied. It is improper for RCOC to utilize the "consultative" model without taking into account the individual and unique needs of each consumer. Taking the individual and unique needs of this consumer into account, the

consultative model was not appropriate to meet Claimant's needs. This conclusion is based upon factual findings one through forty-one and legal conclusions one through fourteen.

ORDER

The appeal of Claimant is granted. Regional Center of Orange County shall reimburse Claimant's parents in the amount of \$57,901.75.

RCOC shall reimburse Claimant's parents for CARD services provided to Claimant from January 2006 to the present date.

RCOC shall continue to fund behavioral services from CARD or if CARD is not available, from another service agency, for a period of no less than six months from the date of this decision.

All factual and legal arguments not addressed herein are unsupported by the evidence, determined to be without merit, and are therefore rejected.

NOTICE

This is a final administrative decision pursuant to Welfare and Institutions Code § 4712.5, subdivision (b) (2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within ninety days.

Dated: _____

ELIZABETH FEYZBAKHS
Administrative Law Judge
Office of Administrative Hearings